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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 MARCEL O. GOMEZ,

12 Petitioner,

13 vs.

14 JEFFREY FAGOT, Regional
15 Administrator, Adult Parole Operations;
16 Region 4,

Respondent.

CASE NO. 06-CV-2411-H (CAB)

ORDER DENYING MOTION FOR
RECONSIDERATION AND
MOTION FOR APPOINTMENT
OF COUNSEL AND GRANTING
MOTION FOR LEAVE TO
APPEAL IN FORMA PAUPERIS

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18 On September 8, 2008, petitioner Marcel Omar Gomez (“Petitioner”), a state prisoner
19 proceeding pro se, filed a document which includes an appeal of the Court’s order with a
20 number of motions including a request for reconsideration by this Court and a motion to
21 appoint counsel. (Doc. No. 81) On September 16, 2008, petitioner filed a motion to proceed
22 in forma pauperis. (Doc. No. 82) To the extent that these motions are directed at the District
23 Court, the Court denies the motion for reconsideration and all other motions. The Court grants
24 Petitioner’s motion to proceed in forma pauperis for his appeal to the Ninth Circuit.

25 **Background**

26 On July 24, 2008, this Court issued an order adopting the report and recommendation
27 to deny the habeas petition and denying a certificate of appealability. (Doc. No. 78) Petitioner
28 had claimed that the imposition of the sex offender registration requirement violated the terms

1 of his plea agreement and requested the plea and conviction be set aside because of ineffective
2 assistance of counsel. This Court concluded that Petitioner was not deprived of effective
3 assistance of counsel and that he entered the plea agreement knowingly and voluntarily, and
4 accordingly, denied Petitioner's motion for a writ of habeas corpus. (Order Adopting R&R
5 11, 13).

6 Discussion

7 A. Motion for Reconsideration

8 Petitioner filed a document that appears to combine an appeal of the Court's order with
9 a motion for reconsideration and other requests. To the extent that any motions are directed
10 at the District Court, the Court denies the motions. Reconsideration "is appropriate if the
11 district court (1) is presented with newly discovered evidence, (2) committed clear error or the
12 initial decision was manifestly unjust, or (3) if there is an intervening change in controlling
13 law." School Dist. No. 1J, Multnomah County v. AC & S, Inc., 5 F.3d 1255, 1263 (9th Cir.
14 1993). Whether to grant or deny reconsideration is within the discretion of the district court.
15 United States v. Desert Gold Mining Co., 433 F.2d 713, 715 (9th Cir. 1970).

16 After a thorough review of Plaintiff's motion and the record in this case, the Court
17 concludes that Plaintiff's motion fails to establish grounds for reconsideration. Therefore, the
18 Court denies Plaintiff's motion.

19 B. Motion to Appoint Counsel

20 Second, petitioner filed an motion for appointment of counsel. To the extent that this
21 motion is directed at the District Court, the Court denies the motion. The Sixth Amendment
22 right to counsel does not extend to federal habeas corpus actions by state prisoners. See
23 Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986). However, a federal habeas petitioner
24 is entitled to appointed counsel if the court "determines that the interests of justice so require."
25 18 U.S.C. § 3006A(a)(2)(B); Terrovona v. Kincheloe, 912 F.2d 1176, 1181 (9th Cir. 1990).
26 The Court concludes that Petitioner has sufficiently represented himself to date, that Petitioner
27 appears to have a good understanding of this case and the legal and factual issues involved, and
28 that the interests of justice do not at this time require the appointment of counsel.

1 **C. Motion to Proceed In Forma Pauperis**

2 Petitioner filed a motion for leave to appeal in forma pauperis for his appeal to the Ninth
3 Circuit. Under the federal rules, motions for leave to appeal in forma pauperis are properly
4 filed in the district court. See
5 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a). Based on Petitioner's monetary status, the
6 Court grants Petitioner's motion to proceed in forma pauperis for his appeal. This Court
7 renews its denial of a certificate of appealability.

8 IT IS SO ORDERED.

9 Dated: October 9, 2008

10 
11 MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT

12 COPIES TO:
13 All parties of record.

14 and

15 Ms. Isabel Gomez
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